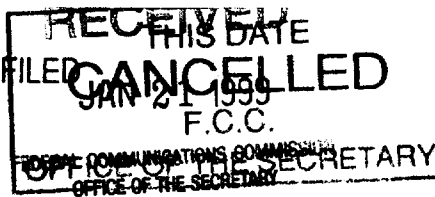


EX PARTE OR LATE FILED



RECEIVED

JAN 21 1999

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

1301 K STREET, N.W.

SUITE 1000 WEST

WASHINGTON, D.C. 20005-3317

(202) 326-7900

FACSIMILE:

(202) 326-7999

1 COMMERCE SQUARE

2005 MARKET STREET

SUITE 2340

PHILADELPHIA, PA 19103

(215) 864-7270

FACSIMILE: (215) 864-7280

MICHAEL K. KELLOGG  
PETER W. HUBER  
MARK C. HANSEN  
K. CHRIS TODD  
MARK L. EVANS  
AUSTIN C. SCHLICK  
STEVEN F. BENZ  
NEIL M. GORSUCH  
GEOFFREY M. KLINEBERG  
REID M. FIGEL  
HENK BRANDS  
SEAN A. LEV

January 21, 1999

**Ex Parte Filing**

Magalie Salas, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
12<sup>th</sup> Street Lobby, Room TW-A325  
Washington, D.C. 20554

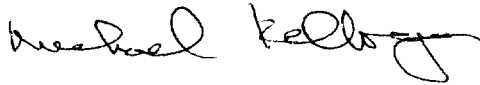
In re Matter of the Pay Telephone Reclassification  
and Compensation Provisions of the Telecommunications  
Act of 1996, CC Docket No. 96-128

Dear Ms. Salas:

Enclosed for filing in this docket are the original and one copy of letters and an attachment I sent to Kyle Dixon, Paul Gallant, Linda Kinney, Kevin Martin, Thomas Power, and Larry Strickling on behalf of the RBOC/GTE/SNET Coalition. I would ask that you include the letters in the record of this proceeding in compliance with 47 C.F.R. § 1.1206(a)(2).

If you have any questions concerning this matter, please contact me at (202) 326-7902.

Yours sincerely,



Michael K. Kellogg

Enclosure

No. of Copies rec'd  
List ABCDE

041

RECEIVED

JAN 21 1999

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

1301 K STREET, N.W.  
SUITE 1000 WEST  
WASHINGTON, D.C. 20005-3317

(202) 326-7900

FACSIMILE:  
(202) 326-7999

MICHAEL K. KELLOGG  
PETER W. HUBER  
MARK C. HANSEN  
K. CHRIS TODD  
MARK L. EVANS  
AUSTIN C. SCHLICK  
STEVEN F. BENZ  
NEIL M. GORSUCH  
GEOFFREY M. KLINEBERG  
REID M. FIGEL  
HENK BRANDS  
SEAN A. LEV

1 COMMERCE SQUARE  
2005 MARKET STREET  
SUITE 2340  
PHILADELPHIA, PA 19103  
(215) 864-7270  
FACSIMILE: (215) 864-7280

January 21, 1999

Lawrence Strickling  
Deputy Chief, Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 500  
Washington, DC 20554

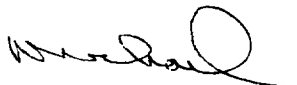
Dear Larry:

In our series of meetings on payphones over the last week, the same basic questions have come up repeatedly. Since our time with each office has been necessarily limited, I thought it might be helpful to provide you with the RBOC/GTE/SNET Payphone Coalition's answers to the most commonly-asked questions on the payphone docket. I hope this is helpful.

Please give me a call if you would like to pursue any of these answers further or have any other questions on the issue.

Thank you for your time on this matter.

Yours sincerely,



Michael K. Kellogg

Enclosure

cc: Craig Stroup  
Glenn Reynolds  
Greg Lipscomb  
Dorothy Attwood  
Don Stockdale

Bill Rogerson  
Richard Cameron  
Milton Price

RECEIVED

JAN 21 1999

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

1301 K STREET, N.W.  
SUITE 1000 WEST  
WASHINGTON, D.C. 20005-3317

(202) 326-7900  
FACSIMILE:  
(202) 326-7999

1 COMMERCE SQUARE  
2005 MARKET STREET  
SUITE 2340  
PHILADELPHIA, PA 19103  
(215) 864-7270  
FACSIMILE: (215) 864-7280

MICHAEL K. KELLOGG  
PETER W. HUBER  
MARK C. HANSEN  
K. CHRIS TODD  
MARK L. EVANS  
AUSTIN C. SCHLICK  
STEVEN F. BENZ  
NEIL M. GORSUCH  
GEOFFREY M. KLINEBERG  
REID M. FIGEL  
HENK BRANDS  
SEAN A. LEV

January 21, 1999

Linda Kinney  
Legal Advisor to Commissioner Ness  
Federal Communications Commission  
445 Twelfth Street, S.W.  
12<sup>th</sup> Street Lobby, Room 8B-115  
Washington, DC 20554

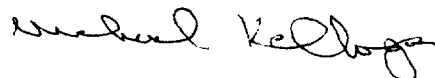
Dear Ms. Kinney:

In our series of meetings on payphones over the last week, the same basic questions have come up repeatedly. Since our time with each office has been necessarily limited, I thought it might be helpful to provide you with the RBOC/GTE/SNET Payphone Coalition's answers to the most commonly-asked questions on the payphone docket. I hope this is helpful.

Please give me a call if you would like to pursue any of these answers further or have any other questions on the issue.

Thank you for your time on this matter.

Yours sincerely,



Michael K. Kellogg

Enclosure

cc: Jim Casserly

RECEIVED

JAN 21 1999

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

1301 K STREET, N.W.  
SUITE 1000 WEST  
WASHINGTON, D.C. 20005-3317

(202) 326-7900

FACSIMILE:  
(202) 326-7999

1 COMMERCE SQUARE  
2005 MARKET STREET  
SUITE 2340  
PHILADELPHIA, PA 19103  
(215) 864-7270  
FACSIMILE: (215) 864-7280

MICHAEL K. KELLOGG  
PETER W. HUBER  
MARK C. HANSEN  
K. CHRIS TODD  
MARK L. EVANS  
AUSTIN C. SCHLICK  
STEVEN F. BENZ  
NEIL M. GORSUCH  
GEOFFREY M. KLINEBERG  
REID M. FIGEL  
HENK BRANDS  
SEAN A. LEV

January 21, 1999

Kyle D. Dixon  
Legal Advisor to Commissioner Powell  
Federal Communications Commission  
445 Twelfth Street, S.W.  
12<sup>th</sup> Street Lobby, Room 8A-204  
Washington, DC 20554

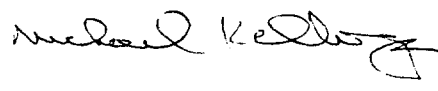
Dear Mr. Dixon:

In our series of meetings on payphones over the last week, the same basic questions have come up repeatedly. Since our time with each office has been necessarily limited, I thought it might be helpful to provide you with the RBOC/GTE/SNET Payphone Coalition's answers to the most commonly-asked questions on the payphone docket. I hope this is helpful.

Please give me a call if you would like to pursue any of these answers further or have any other questions on the issue.

Thank you for your time on this matter.

Yours sincerely,



Michael K. Kellogg

Enclosure

RECEIVED

JAN 21 1999

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

1301 K STREET, N.W.  
SUITE 1000 WEST  
WASHINGTON, D.C. 20005-3317

(202) 326-7900  
FACSIMILE:  
(202) 326-7999

1 COMMERCE SQUARE  
2005 MARKET STREET  
SUITE 2340  
PHILADELPHIA, PA 19103  
(215) 864-7270  
FACSIMILE: (215) 864-7280

MICHAEL K. KELLOGG  
PETER W. HUBER  
MARK C. HANSEN  
K. CHRIS TODD  
MARK L. EVANS  
AUSTIN C. SCHLICK  
STEVEN F. BENZ  
NEIL M. GORSUCH  
GEOFFREY M. KLINEBERG  
REID M. FIGEL  
HENK BRANDS  
SEAN A. LEV

January 21, 1999

Paul Gallant  
Legal Advisor to Commissioner Tristani  
Federal Communications Commission  
445 Twelfth Street, S.W.  
12<sup>th</sup> Street Lobby, Room 8C-302  
Washington, DC 20554

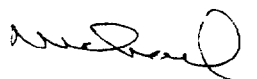
Dear Paul:

In our series of meetings on payphones over the last week, the same basic questions have come up repeatedly. Since our time with each office has been necessarily limited, I thought it might be helpful to provide you with the RBOC/GTE/SNET Payphone Coalition's answers to the most commonly-asked questions on the payphone docket. I hope this is helpful.

Please give me a call if you would like to pursue any of these answers further or have any other questions on the issue.

Thank you for your time on this matter.

Yours sincerely,



Michael K. Kellogg

Enclosure

RECEIVED

JAN 21 1999

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

1301 K STREET, N.W.

SUITE 1000 WEST

WASHINGTON, D.C. 20005-3317

(202) 326-7900

FACSIMILE:

(202) 326-7999

1 COMMERCE SQUARE

2005 MARKET STREET

SUITE 2340

PHILADELPHIA, PA 19103

(215) 864-7270

FACSIMILE: (215) 864-7280

MICHAEL K. KELLOGG  
PETER W. HUBER  
MARK C. HANSEN  
K. CHRIS TODD  
MARK L. EVANS  
AUSTIN C. SCHLICK  
STEVEN F. BENZ  
NEIL M. GORSUCH  
GEOFFREY M. KLINEBERG  
REID M. FIGEL  
HENK BRANDS  
SEAN A. LEV

January 21, 1999

Thomas C. Power  
Legal Advisor to Chairman Kennard  
Federal Communications Commission  
445 Twelfth Street, S.W.  
12<sup>th</sup> Street Lobby, Room 8B-201  
Washington, DC 20554

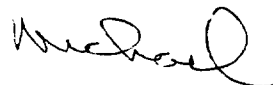
Dear Tom:

In our series of meetings on payphones over the last week, the same basic questions have come up repeatedly. Since our time with each office has been necessarily limited, I thought it might be helpful to provide you with the RBOC/GTE/SNET Payphone Coalition's answers to the most commonly-asked questions on the payphone docket. I hope this is helpful.

Please give me a call if you would like to pursue any of these answers further or have any other questions on the issue.

Thank you for your time on this matter.

Yours sincerely,



Michael K. Kellogg

Enclosure

RECEIVED

JAN 21 1999

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

1301 K STREET, N.W.  
SUITE 1000 WEST  
WASHINGTON, D.C. 20005-3317

(202) 326-7900

FACSIMILE:  
(202) 326-7999

1 COMMERCE SQUARE  
2005 MARKET STREET  
SUITE 2340  
PHILADELPHIA, PA 19103  
(215) 864-7270  
FACSIMILE: (215) 864-7280

MICHAEL K. KELLOGG  
PETER W. HUBER  
MARK C. HANSEN  
K. CHRIS TODD  
MARK L. EVANS  
AUSTIN C. SCHLICK  
STEVEN F. BENZ  
NEIL M. GORSUCH  
GEOFFREY M. KLINEBERG  
REID M. FIGEL  
HENK BRANDS  
SEAN A. LEV

January 21, 1999

Kevin Martin  
Legal Advisor to Commissioner Furchtgott-Roth  
Federal Communications Commission  
445 Twelfth Street, S.W.  
12<sup>th</sup> Street Lobby, Room 8A-302  
Washington, DC 20554


Dear Kevin:

In our series of meetings on payphones over the last week, the same basic questions have come up repeatedly. Since our time with each office has been necessarily limited, I thought it might be helpful to provide you with the RBOC/GTE/SNET Payphone Coalition's answers to the most commonly-asked questions on the payphone docket. I hope this is helpful.

Please give me a call if you would like to pursue any of these answers further or have any other questions on the issue.

Thank you for your time on this matter.

Yours sincerely,



Michael K. Kellogg

Enclosure

## **Payphones Wrap-Up: Eight Commonly Asked Questions**

### **1. Why should the Commission continue to pursue a market-based rate in the face of the D.C. Circuit's remand?**

We remain convinced that a market-based rate is the better approach, for both substantive and institutional reasons.

The substantive reasons: the accuracy of a bottoms-up, cost based rate depends on this agency's ability to measure costs in a competitive industry that has never been subject to significant regulation. Cost measurement is inherently unreliable. The problem is magnified here because the Commission would be required to allocate joint and common costs on a per-call basis — this would put the Commission in the position of deciding what volume of calls “should” be required to support a marginal phone.

A proper top-down avoided cost approach mitigates both of these problems. First, it anchors the per-call rate in the market so the problem of measuring costs and allocating joint and common costs is taken care of by the invisible hand of market competition. Second, because all costs that are properly considered “avoidable” are incurred on a marginal basis, the Commission should be able to measure those costs on a per-call basis without decreeing what an appropriate call volume is by administrative fiat.

Just as important, the institutional reason: The Commission should stay the course in order to vindicate its effort to move beyond the discredited, cost-plus regulatory methods of the past to a more market-sensitive approach. Certainly the Court left this approach open. The Court did require the Commission to provide further explanation on two points — why the local coin market is an appropriate surrogate for the coinless market, and why it makes sense to subtract costs from a market price to arrive at a regulated rate. The Commission has assembled a record that answers these questions in a remarkably thorough and well documented way. Several distinguished economists — including a Nobel laureate — have endorsed the avoided cost approach. The objections of the IXCs to the Commission's approach have been thoroughly refuted by economists and industry analysts.

### **2. As a practical matter, don't we need to lower the rate in response to the D.C. Circuit's remand?**

Absolutely not. The Court left the Commission's rate in place, and in no way suggested that additional pennies should be shaved from the \$0.284 rate. The only obligation the Commission has is to provide a reasoned explanation for the rate it has chosen. Any arbitrary and unjustified changes in the rate will themselves be subject to challenge.



**4. Why shouldn't the Commission rely on the MCI cost study, which documented a per-call cost of coinless calls of less than \$.15, or other costs studies in the record?**

The Coalition has refuted the MCI study in detail. As an initial matter, its per-call cost calculation was based on a call volume of 700 calls. That call count would force many, if not most, Coalition payphones under water. Moreover, MCI's study ignored certain fixed overhead expenses and software costs. The treatment of payphone and enclosure costs understated those costs. And certain costs unique to per-call costs — including bad debt and collections costs — were simply ignored. Our reply comments of July 27, 1998, answer MCI's study in detail.

The IXCs have also attempted to rely on cost studies submitted to state PUCs; these studies are strictly incremental cost studies that do estimate the costs that a competitive PSP must incur to provide service. AT&T has relied on a cost study prepared by SBC several years ago. But as SBC has explained to the Commission, that study excluded many costs incurred by a competitive PSP, including rent, financial, legal, human resources, procurement, and systems expenses. SBC has also documented that its actual maintenance and SG&A (Sales, General & Administrative) expenses exceed the earlier estimates — in the case of SG&A, by more than 50 percent.

Again, evidence in the record shows that all of this cost data is actually consistent with per-call costs in excess of \$.35.

**5. How can you dispute the fact that there are locational monopolies — don't PSPs bid for prime sites?**

We have never disputed that some payphone locations are more valuable than others — just as some retail locations are more valuable than others. The owners of such locations earn a higher rent, because the location is more productive. That says nothing about the competitiveness of the market for the product. Professor Kahn has used the analogy of an extremely fertile wheat field. Such a field rents for more than a marginally productive plot, but the market for wheat is still competitive and the price is still equal to the cost of producing the marginal bushel of wheat. The same is true here.

There is, however, no evidence that PSPs are able to charge rates in excess of the market rate and in excess of their costs as a result of monopoly power. To the contrary, the largely uniform local coin rate proves that market participants are constrained by competition — PSPs are price takers. We have shown that most PSPs face significant competition, not only from other PSPs, but also from wireless and other substitutes. Despite repeated opportunities to submit evidence showing evidence of monopoly pricing by PSPs, the IXCs have failed to do so. Moreover, the FCC explicitly invited States with locational monopoly problems to identify those problems and request permission to deal with them: no State has done so.